

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

27168

FILE: B-212610

DATE: January 9, 1984

MATTER OF: Blast Deflectors, Inc.

## DIGEST:

1. An agency need not resolicit even though a potential bidder was unaware of the solicitation because the bidders mailing list on which its name appeared was lost and the agency allegedly misclassified the Commerce Business Daily notice of the procurement where the protester fails to show that the agency deliberately attempted to exclude it from the competition and where, although only one bid was received, the agency made a significant effort to obtain competition and the protester has failed to show that award was made at an unreasonable price.
2. Where a protester alleges that during an informal industry survey which preceded the issuance of a solicitation it was misinformed by the procuring agency as to the agency's needs but fails to show that it was thereby prejudiced in any way, then GAO need not consider the merits of its protest as to this issue.

Blast Deflectors, Inc., protests the award of a contract by the Bureau of Land Management (BLM), Department of the Interior, to the sole bidder under invitation for bids No. YA 551-IFB3-340038 for 550 feet of jet aircraft blast fencing, F.O.B. Boise Interagency Fire Center, Boise, Idaho. We deny the protest.

A barrier is required to protect private, commercial property adjacent to the Fire Center from damage caused by engine blast from government-operated jet aircraft. Sometime before or during February 1983, the Fire Center contacted Blast Deflectors and four other companies

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to obtain information about the types of aircraft blast fences that were available. Blast Deflectors was promised at that time that it would be included in the suggested bidders list for the procurement.

In May 1983, the Fire Center, as the using agency, sent a requisition for the fencing to the BLM's Denver Service Center, which was to conduct the procurement. The requisition named Transpo-Safety Inc., the ultimate awardee, as a source of supply, and, according to the Fire Center, was accompanied by a suggested bidders list which included Transpo-Safety, Blast Deflectors, and three other firms. However, for reasons unknown, only the requisition was received by contracting officials at the Service Center. There is nothing on the face of the requisition to indicate that a bidders list, which was typed on a separate sheet of paper, also should have been received. Since the Service Center had no bidders list for aircraft blast fences, the IFB, issued on June 15, was mailed to approximately 30 firms on the standard bidders list for fence materials. In addition, notice of the solicitation was published in the Commerce Business Daily (CBD) on June 10, 1983.

Although neither Transpo-Safety nor Blast Deflectors was on the bidders list from which the mass mailing was made, Transpo-Safety nevertheless obtained a copy of the IFB after learning of the solicitation when it called the agency during the week of July 4 to inquire about the progress of the procurement. Only one bid, that of Transpo-Safety for \$87,450, was received by the July 15 bid opening date. Blast Deflectors apparently did not learn of the solicitation until it called the Fire Center on July 21 and did not protest the making of any award under the IFB until shortly after award was made to Transpo-Safety on July 22. BLM denied Blast Deflector's protest and Blast Deflectors filed this protest with our Office.

Blast Deflectors argues that it unfairly was deprived of an opportunity to compete for this procurement. The protester states that not only did BLM, contrary to its promise, fail to notify Blast Deflectors of the issuance of

the IFB, but also misclassified the CBD notice of the procurement. Blast Deflectors asks that our Office investigate whether there was any "collusion" in the exclusion of Blast Deflectors from competition, citing as suspicious the facts that the requisition named Transpo-Safety as a supplier, that Transpo-Safety was on the same suggested bidders list prepared by the Fire Center that Blast Deflectors was on but that Transpo-Safety received a copy of the IFB while Blast Deflectors did not, and that the solicitation allegedly restricted the procurement to vertical fence made from double reverse corrugated (DRC) fabric manufactured only by Transpo-Safety.

This procurement was synopsized in the CBD under category 56, "Construction and Building Materials." Blast Deflectors argues that the products listed under that category are unfinished products, citing the vinyl wall covering, gratings, crushed gravel, sandpaper, fence stays, building board, and similar material listed in the June 10, 1983 issue of the CBD. Blast Deflectors contends that an aircraft blast fence is a finished product and therefore should have been listed under category Y, "Construction (i.e.) New Construction and major additions to existing buildings or facilities," or category Z, "Maintenance, Repair & Alteration of Real Property." The protester states that it customarily looks under categories Y and Z for procurements of this product and did not see BLM's synopsis since it appeared elsewhere.

First, our examination of the June 10, 1983 issue of the CBD, indicates that the distinction between categories Y and Z on the one hand and category 56 on the other is not that between finished and unfinished products, but instead apparently is that between procurements requiring a contractor to do painting, repairs, alterations, replacements, installations, or construction, i.e., to perform on-site labor, as in categories Y and Z, and those procurements merely requiring the contractor to provide construction and building materials, as in category 56. Since BLM was merely soliciting the supply but not the installation of 550 feet of aircraft blast fencing, we do not believe that Blast Deflectors has shown that listing the notice under category 56 rather than under categories Y and Z represented a misclassification.

Second, we have held that neither the misclassification of a CBD notice nor the omission of a firm from

the bidders mailing list prevents award and requires resolicitation where there was no deliberate attempt to exclude the protester from competition, there was a significant effort to obtain competition, and a reasonable price was obtained. This rule is applied even where only one bid is received. See Hartridge Equipment Corporation, B-209061, March 1, 1983, 83-1 CPD 207; Preventive Health Programs, Inc., B-195877, January 22, 1980, 80-1 CPD 63; Culligan Incorporated, Cincinnati, Ohio, 56 Comp. Gen. 1011 (1977), 77-2 CPD 242.

In regard to the possibility of collusion, we note that our Office does not conduct independent investigations into disputed issues, see Easco Tools, Inc., B-212716, September 16, 1983, 83-2 CPD 338, but instead essentially relies upon the factual record developed by the parties. We conclude that on the record before us Blast Deflectors has failed to show any collusion or deliberate effort to exclude it from competition. Although the requisition named Transpo-Safety as a potential supplier, the agency attempted to obtain competition from other firms by including four other names on the suggested bidders list submitted along with the requisition, by placing the CBD notice, and by mailing copies of the IFB to over 30 firms. Transpo-Safety received a copy of the IFB while Blast Deflectors did not because Transpo-Safety, unlike Blast Deflectors, telephoned the agency to inquire about the procurement after issuance of the IFB and before the closing date for receipt of bids. The protester has not shown that the procurement was restricted to DRC fence materials since the specifications in fact only required that the fence be "of DRC or equal" and there is no indication that DRC was the only acceptable type of fence construction.

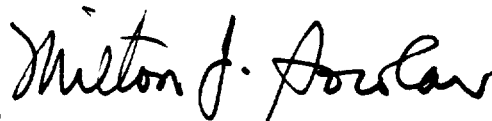
As indicated above, the agency made a significant effort to obtain competition, first by including the suggested bidders list with the requisition, then by placing the CBD notice, then by mailing copies of the IFB to over 30 firms on the standard bidders list for fence materials, and finally by responding to a timely request for a copy of the IFB. Although BLM only received one bid, that of Transpo-Safety for \$87,450, this bid was only approximately 2.5 percent higher than the agency estimate of \$85,250. Blast Deflectors' unsupported allegation that it could

supply an aircraft blast fence meeting the specifications for only \$56,250 does not affirmatively prove the unreasonableness of the agency's estimate, see The Holloway Company, B-197557, August 18, 1980, 80-2 CPD 128; Ureco Construction Inc. and American Timber Co., B-194550, B-194550.2, November 7, 1979, 79-2 CPD 335, and therefore does not demonstrate that the agency abused its discretion by making award at an unreasonable price. See Isometrics, Inc., B-204556, April 13, 1982, 82-1 CPD 340; Ureco Construction Inc. and American Timber Co., supra; Federal Procurement Regulations § 1-2.404-1(b)(7) (amend. 121, November 1973).

Blast Deflectors also alleges that during its discussions with Fire Center officials before the issuance of the IFB it received information indicating that the agency needed an aircraft blast fence capable of providing significantly more blast protection than that eventually specified in the IFB. However, since Blast Deflectors has not contended that it was thereby deterred from submitting a bid or that it lost the contract because it was misled into offering an unnecessarily strong aircraft blast fence at a higher price than that offered by the awardee, we fail to see how it was prejudiced by the alleged misinformation. Accordingly, we will not consider the merits of this allegation.

Given our conclusions above, we will not consider Blast Deflector's suggestion that, as a remedy for the government's alleged misconduct, the government purchase and test 60 feet of Blast Deflectors' allegedly less expensive fencing to determine whether it meets the specifications of the IFB.

The protest is denied.

*for*   
Comptroller General  
of the United States